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May 17, 2016

Via certified mail

CORPORATION SERVICE COMPANY
Registered Agent for Coyote Creek Mining
Company, L.L.C.
1709 N 19th Street Suite 3
Bismarck, ND 58501-2121

Terry O'Clair
Director, Division of Air Quality
918 East Divide Avenue, 2nd Floor
Bismarck, ND 58501

Gina McCarthy
Office of the Administrator, 1101A
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460

Dave Glatt, Chief
Environmental Health Section
North Dakota Department of Health
918 East Divide Avenue
Bismarck, ND 58501

Re: Sixty-day Notice of Intent to file a lawsuit against Coyote Creek Mining Company, LLC, for violations of the Clean Air Act § 111, 42 U.S.C. § 7411, New Source Performance Standards

Dear Coyote Creek Mining Company:

On behalf of Casey Voigt and Julie Voigt we write to inform you, pursuant to the Clean Air Act § 304(b), 42 U.S.C. § 7604 (b), and 40 C.F.R. pt. 54, that we intend to file suit against Coyote Creek Mining Company, LLC for violations of the Clean Air Act's § 111 New Source Performance Standards ("NSPS"), 42 U.S.C. § 7411, and North Dakota's Clean Air Act State Implementation Plan ("SIP") at your mine located in Mercer County, ND. We intend to file this lawsuit against you unless the violations discussed herein are remedied within sixty days. Specifically, Coyote Creek Mining Company ("CCMC") "must prepare and operate in accordance with a submitted fugitive coal dust emissions control plan" for its newly constructed and now operational open storage coal pile. 40 C.F.R. § 60.254(c). No such plan has been filed with the North Dakota Department of Health's Air Quality Division or the Environmental Protection Agency, and therefore, you are operating your coal pile in violation of federal law.

The Clean Air Act authorizes a court to issue injunctions to enforce § 111 and SIP provisions and to levy civil penalties of up to thirty-two thousand, five hundred dollars (\$32,500) each day that each violation continues. *See* 42 U.S.C. § 7604(a), 40 C.F.R. § 19.4. You are currently in violation of no less than four separate Clean Air Act regulations, subjecting you to

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liability of up to \$150,000 of civil penalties per day. These regulations include the requirement to develop a fugitive dust control plan, the requirement to operate in accordance with a fugitive dust control plan, and North Dakota's State Implementation Plan incorporating these two requirements by reference. *See* 40 C.F.R. § 60.254(c), N.D.A.C. § 33-15-12-01.1. If you continue to operate your coal pile in violation of the Clean Air Act, you will continue to incur additional liability.

The New Source Performance Standards 42 U.S.C. § 7411 apply to owners and operators of any stationary sources which contain newly constructed or modified "affected facilities" located at an NSPS Source Category. As applicable to you, 40 C.F.R. § 60.250- 60.258 (NSPS Subpart Y) sets standards of performance for one source category: coal preparation and processing plants that process more than 181 megagrams (Mg) (200 tons) of coal per day. You are the owner and operator of such a processing facility located in Section 10 of T143N, R88W. Your processing facility, which is composed of an eight-acre open coal storage pile, a primary crusher, secondary crusher, trucks and bulldozer loading and unloading operations, and conveying equipment, is capable of handling 2,000 tons of coal per hour—significantly greater than the threshold under Subpart Y. It is also a newly constructed facility, and therefore subject to New Source Performance Standards. *See* 42 U.S.C. § 111(a)(2) (defining "new"). The open storage coal pile at this processing plant, constructed in 2015 and 2016, is "a storage area, that is not enclosed that is used to store coal, including the equipment used in the loading, unloading, and conveying operations of the facility." 40 C.F.R. § 60.251(m). This open storage coal pile was constructed after May 27, 2009, and is therefore an affected facility under this New Source Performance Standard. 40 C.F.R. § 60.250(d).

40 C.F.R. § 60.254 designates work practice standards for open storage piles that you are required to abide by. Specifically, the Environmental Protection Agency has determined that the work practice requirements contained in 40 C.F.R. § 60.254(c) are the "best demonstrated technology" for reducing emissions from these piles, which can be significant contributors to particulate matter. That plan must identify and describe the control measures the owner or operator will use to minimize fugitive coal dust emissions "to the greatest extent practicable" from each open storage pile using one of several available control measures. Control measures include enclosing the pile, installing or operating a water spray or fogging system, applying chemical dust where possible, use of a wind barrier, compaction or use of a vegetative cover. The operator must explain how the plan is appropriate for the site, and should revise the plan to reflect changing conditions. This plan must be submitted before startup of the new, reconstructed, or modified affected facility.

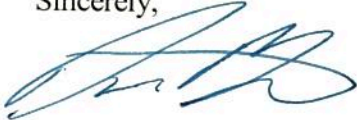
As you have begun loading coal onto this pile for storage, you are now operating and using the pile, and are in violation of these provisions. Further, failure to submit and abide by such a plan harms our clients—Casey and Julie Voigt—who own and lease land in the immediate vicinity of your coal pile.

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We hope that Coyote Creek Mine will act expeditiously to remedy the serious issues described in this letter. If you believe any portion of this Notice is in error or if you wish to discuss any portion of this Notice within the next sixty days, please contact us at the address and phone number listed above. We would welcome discussion about effective remedies and actions that might be taken to assure Coyote Creek's compliance with the Clean Air Act.

Sincerely,



Derrick Braaten

Copies: Shaun McGrath, EPA Region 8 Administrator
Jack Dalrymple, Governor of North Dakota